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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 In re:)	Case No. 10-41653 WJL
12 MARK KESEL)	CHAPTER 11
13 Debtor.)	
14)	Date: December 14, 2011
15)	Time: 9:30 A.M.
16)	Place: 1300 Clay Street
17)	Courtroom 220
)	Oakland, CA 94612
)	Judge: William J. Lafferty

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19 **NOTICE OF HEARING ON MOTION BY DEBTOR, MARK KESEL TO DISMISS**
20 **CHAPTER 11 CASE**

21 TO: ALL PARTIES IN INTEREST, THE OFFICE OF THE UNITED STATES TRUSTEE, AND
22 THEIR RESPECTIVE ATTORNEYS OF RECORD

23 **NOTICE IS HEREBY GIVEN** that on December 14, 2011, at 9:30 AM in the Courtroom
24 of the Hon. William J. Lafferty, located in the United States Bankruptcy Court for the Northern
25 District of California, Oakland Division, 1300 Clay Street, Courtroom 220, Oakland, California
26 94612, a hearing will be held on the Motion by Debtor Mark Kesel to Dismiss Chapter 11 Case (the
27 "Motion to Dismiss"). The Motion to Dismiss is conditioned upon approval of the accompanying
28 Motion by Debtor Mark Kesel for Order Approving Compromise of Controversy with Applied

1 Materials (the “Compromise Motion”), as the settlement which is the subject of the Compromise
2 Motion requires that the Court approve the settlement and dismiss the Chapter 11 case. By his
3 Motion to Dismiss Debtor will, and hereby does, move the Court for an order dismissing his Chapter
4 11 Case subject to retention of and continued validity of the Order Approving the Compromise
5 Motion (provided that such motion is granted) which order shall remain binding and effective
6 notwithstanding dismissal of the case.

7 The Motion is made upon the grounds that Debtor has achieved a settlement with Applied
8 Materials, Inc. (“Applied”) and that settlement has resolved the primary dispute in this Chapter 11
9 case such that there exists no cause for the Chapter 11 case to remain pending. Accordingly, Debtor
10 requests that the case be dismissed subject to the continued effectiveness of the above-identified
11 order.

12 As is more fully set forth in the Motion, and in the Settlement Agreement, the settlement
13 provides for full resolution of the dispute which has been pending for many years between Debtor
14 (and other parties) and Applied, and which resulted in issuance of a Judgment against Debtor (and
15 other parties) in the amount of \$1,427,928.94 (the “Judgment”). The settlement provides, *inter alia*,
16 that (1) the debtor parties, including Debtor (the “Debtor Parties”) will provide Applied with a non-
17 exclusive license as to any patents owned by the Debtor Parties (with those patents, which are owned
18 by Debtor Party Multimetrixx, listed in an attachment to the Settlement Agreement); (2) the Debtor
19 Parties will not further challenge the underlying Judgment and will not pursue unjust enrichment
20 claims; (3) Applied will not enforce the Judgment against the Debtor Parties (except that Applied
21 may assert the Judgment in any action filed by the Debtor Parties against Applied, as is set forth in
22 the Settlement Agreement); (4) Applied will release any and all judgment liens; and (5) Debtor and
23 co-judgment debtor Boris Kesil, who has filed a Chapter 11 case pending in the San Jose Division
24 shall dismiss their bankruptcy cases. (*See* Settlement Agreement Pgs. 3-5 for detailed terms of the
25 “Agreement” section).

26 As a result of the settlement, Debtor will resolve the primary and central dispute pending in
27 the Bankruptcy Case. The agreement will settle the \$1,427,928.94 Judgment against Debtor in a
28 manner which will avoid any collection action by Applied against Debtor (absent specific action by

1 the Debtor Parties as set forth in the settlement agreement). The settlement will also reduce the risks
2 associated with the disputes between the parties, and will avoid future litigation, as Applied had
3 indicated an intent to file a non-dischargeability action against Debtor. The settlement also provides
4 for dismissal of the Debtor's bankruptcy case such that further administrative expenses will be
5 avoided.

6 Further, the settlement and proposed dismissal is beneficial for creditors in that the
7 bankruptcy case will be dismissed such that unsecured claims will not be discharged; and, perhaps
8 more importantly, the unsecured claims will not be diluted (either in or out of bankruptcy) by the
9 significant Judgment in the amount of \$1,427,928.94. If the settlement is not approved, and the case
10 not dismissed, other unsecured claims would be dwarfed by the Judgment held by Applied and as a
11 result other unsecured creditors would receive a minimal dividend and would suffer a discharge as to
12 the remaining unpaid portions of their claims. If the settlement is approved, and the case dismissed,
13 those claims will not be discharged, and may be paid outside of bankruptcy (and the creditors
14 otherwise retain their rights to pursue such claims).

15 The Motion is based upon this Notice of Hearing on Motion, the Motion and Points and
16 Authorities and Declaration of Debtor filed herewith, the files in this Chapter 11 case, any further
17 briefing submitted (if any), and the arguments of counsel. A full copy of the moving papers may be
18 obtained upon a request presented to Debtor's counsel (contact information listed in the caption on
19 the preceding page).

20 Respectfully submitted.

21 Dated: November 22, 2011

DIEMER, WHITMAN & CARDOSI, LLP

22 By: /s/ Judith L. Whitman
23 Attorneys for Debtor, Mark Kesel
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